

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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KRISTIN A. CARMODY, M.D.,  
M.H.P.E.

Plaintiff,

v.

Case No:

NEW YORK UNIVERSITY; NYU

1:21-cv-08186-LGS

GROSSMAN SCHOOL OF MEDICINE;

NYU LANGONE HOSPITALS; ROBERT I.

GROSSMAN, M.D.; FRITZ FRANCOIS,

M.D.; STEVEN B. ABRAMSON, M.D.;

ANDREW W. BROTMAN, M.D.; and

ROBERT J. FEMIA, M.D.

Defendants.

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VIDEOTAPED DEPOSITION

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WITNESS: Robert J. Femia, M.D.

DATE: Tuesday, February 14, 2023

START TIME: 2:00 p.m.

END TIME: 3:08 p.m.

REPORTED BY: Kimberly Rawls, CER-1944, Notary Public

JOB No.: 14800

Conducted by videoconference via the Remote Legal  
platform.



REMOTE LEGAL  
COURT REPORTING

646-461-3400

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1 Carmody should be fired prior to you making the decision  
2 -- you claiming to have made the decision that she  
3 should be terminated?

4 MR. CERASIA: Objection to form.

5 BY MR. CAVALERI:

6 Q Yes or no?

7 A Can you repeat the question again?

8 Q Dr. Femia, did Dean Grossman tell you he  
9 believed Dr. Carmody should be fired prior to you coming  
10 to the belief that she should be terminated?

11 A Dr. Grossman did not force me to do anything.

12 Q It's not my question, Dr. Femia. Answer my  
13 question that I asked you.

14 A I am giving you -- just because you don't like  
15 my answer you need to let me finish.

16 Q Dr. Femia, I'm asking you a yes or no  
17 question. Did he tell you he believed Dr. Carmody  
18 should be terminated before you made your decision?

19 MR. CERASIA: He can answer as he deems  
20 appropriate.

21 THE WITNESS: He did not tell me that she  
22 needed to be fired. He -- he told me that he felt this  
23 was a termination-type offense, but that the decision  
24 would be mine and that I should -- he recommended that I  
25 also speak with the others, which is what I did.



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1 I spoke with the others about basically what  
2 had occurred, falsification of a medical record. A  
3 admission of an exam that wasn't done. I -- I weighed  
4 what everyone had felt in regards to that this had risen  
5 to the level of termination and I had to make a decision  
6 about it and that's what I did.

7 Q The portion of the attestation that you're  
8 referencing about performing a history and physical  
9 examination, that was an automatically inserted template  
10 sentence; is that correct?

11 MR. CERASIA: Objection. You're  
12 exceeding the scope of the judge's order.

13 You can answer.

14 I'm not letting this go on very much  
15 longer though.

16 THE WITNESS: I was referring to the  
17 entirety of the medical record documentation, which  
18 includes an attestation which can be modified. Dr.  
19 Carmody did not examine the patient. She had the  
20 ability to modify the attestation, which she didn't do.  
21 There's nothing in the -- in the medical record that  
22 forces you to document something you did not do.

23 She then proceeded to type an abdominal  
24 exam that she did not perform and basically admitted  
25 that she did not see a patient, that she documented,



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1 that she did not examine the patient, that she  
2 documented she had, and in addition, she further  
3 falsified the record by adding typed words in there of  
4 an abdominal exam.

5 Putting that all together that is how I  
6 evaluated the documentation of the entire visit, not  
7 just the attestation piece that you mentioned.

8 MR. CAVALERI: Okay. Thank you, Dr.  
9 Femia.

10 I'm going to share with you what's been  
11 marked as -- that will be marked Exhibit 1. It's a text  
12 message conversation between Dr. Francois and Ms.  
13 Sanchez.

14 (Exhibit 1 marked for identification.)

15 BY MR. CAVALERI:

16 Q I direct you to her -- to the message, the  
17 December 5th text message at 3:45 p.m. when Ms. Sanchez  
18 says, "Rob sent me this screenshot"; do you see that?

19 A Let me see. I have to scroll. Where are you  
20 on the --

21 Q 12/5/2020 at 3:45 p.m.

22 A Okay. And where she says what?

23 Q "Rob sent me this screenshot." Do you see  
24 that?

25 A Yes.



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1 Q Okay. Did you send Nancy Sanchez a screenshot  
2 of the attestation at some point on or around December  
3 5th, 2020?

4 MR. CERASIA: Objection to form.  
5 You can answer.

6 THE WITNESS: I don't recall, but I see  
7 that I documented that I did send her a screenshot. I'm  
8 not sure what that screenshot was. So I can comment,  
9 I'm not sure what screenshot I sent her.

10 MR. CAVALERI: Okay. I'll just show you.  
11 Introduce what's going to be marked as Exhibit 2. It's  
12 a document Bates-stamped D\_01266.

13 (Exhibit 2 marked for identification.)

14 BY MR. CAVALERI:

15 Q Do you see that, Dr. Femia?

16 A Yes.

17 Q Do you recall sending this to Ms. Sanchez on  
18 or around December 5th of 2020?

19 A I don't recall.

20 Q Okay. Looking at this attestation, is it fair  
21 to say that that first sentence where it says, "I  
22 performed a history and physical examination of"  
23 redacted, "and discussed her management with the  
24 resident on the treatment team." That that is a  
25 templated sentence?



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W. BROTMAN, M.D.; and ROBERT J.

FEMIA, M.D.

Defendants.

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VIDEOTAPED DEPOSITION OF ROBERT J. FEMIA, M.D.

DATE: Tuesday, July 19, 2022

TIME: 10:04 a.m.

REPORTED BY: Andrew Adams, CER-1632

JOB No.: 11072

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Conducted by videoconference via the Remote Legal  
platform.

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MR. CERASIA: Objection to form. You can answer.

THE WITNESS: I mean, generally, yes.

BY MR. CAVALERI:

Q How many -- how many options did the attending physicians have?

A Options for what?

Q For the -- for the attestation templates.

A So, typically the attestation templates involve you choosing which type of person you supervise. So, if it was a PA versus a medical resident trainee.

So, you would pick which of those -- initially you would pick which you were referring to, care delivered by a PA versus care delivered by a resident.

So, in that sense the attestations may have been different, but it's not really different that you're just choosing the accurate person providing the care.

All of the templates have the ability to add in text, delete text, and some to require a function key to require you to add text.

Q How did the various hospitals decide what information to include in their attestation templates?

MR. CERASIA: Objection to form. You can answer.

THE WITNESS: There was a process in



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place where, across the board, across the institutions with MCIT involvement, that attestations -- or I should say, that documentation was frequently looked at based on maybe changes or documentation requirements from CMS, changes based on recommendations from compliance or from coding or from billing. So, that process was institutional.

BY MR. CAVALERI:

Q And the benefit of having a template was that it could be consistent across the various physicians; is that correct?

A As I had mentioned before -- are you, well let me go back. Are you referring to an attestation template or templates in general?

Q The attestation template.

A The benefit of the attestation template is that it allowed you to accurately and quickly document the care that you provided.

Q And to document in a way that was consistent across the various providers as well, correct?

MR. CERASIA: Objection to form. You can answer.

THE WITNESS: It was personalized by each of the providers. It was consistent in that sense that it had some very basic elemental facts that you needed



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to document on who you supervised, but it's structured in a way that you could accurately provide how you actually cared for the patient.

BY MR. CAVALERI:

Q Dr. Femia, were you ever trained on how to enter information into Epic?

A Yes.

Q Did that training also include the process by which you could edit the prepopulated language from a template?

A Yes.

Q And did you receive documentation instructing you how you could edit information that was prepopulated by a template?

A I don't recall receiving documentation.

Q Did you receive or view any sort of PowerPoint presentation regarding best practices related to filling an Epic medical record?

MR. CERASIA: Objection to form. You can answer.

THE WITNESS: I don't recall.

BY MR. CAVALERI:

Q Do you recall receiving any documentation or viewing any sort of presentation related to editing any attestation template in Epic?



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A We would receive from MCIT educational emails and examples on numerous topics. I don't recall if one of those specifically was about the attestation template.

Q Do you know whether the billing department would ever approach various physician/providers that edited the attestation template because it did not conform to the information necessary for billing purposes?

A You're saying whether the -- the billing department approached physicians?

Could you repeat the question?

Q Yes, whether the billing department approached physicians regarding their revisions to any attestation template to ensure that they conformed with the requirements for billing purposes?

MR. CERASIA: Objection to form. You can answer.

THE WITNESS: The coding and documentation people will make providers aware if their -- their documentation is missing.

BY MR. CAVALERI:

Q Will they also make them aware if the documentation has been revised in such a way that it -- that it prevents them from properly billing for the care

